

Exhibit I

The Special Commissioner of Investigation

For the New York City School District

CASE FORM

Date: 6/6/2003	Received by: 17	Intake: 20031602
Response Date to the Complainant:		School: 811K
		Dist: 75
Referred From:		Divisio: DSE
Number:		Region:

Complainant wishes to remain confidential? (Y/N) N

If yes, does complainant agree to the release of complainant data to the appropriate office if complaint is referred? (Y/N) Y

Allegation:

Carbon copied correspondence addressed to Mayor Bloomberg from Ernest Jeter, Guidance Counselor assigned to P811K, relates that he is being unfairly harassed about his time by Dr. Susan Erber, Citywide Programs Superintendent and Ms. Bonnie Brown, Director of Operations for CSD # 75 (see attached). Mr. Jeter claims that said parties are well aware of his medical condition, via medical documentation which he has provided, which necessitates medical treatment at the Veteran's Hospital on Tuesdays and Thursdays (due to two line of duty injuries which he sustained at the hands of students). Mr. Jeter writes that although he is absent on these two days, his workload has never suffered as a result.

List of Names:

Last	First	Role	Title	Position	School	Dist	D
BROWN	BONNIE	SU	AD	DIRECTOR OF OPERA		75	DSE
ERBER	SUSAN	SU	SU	SUPERINTENDENT		75	DSE
JETER	ERNEST	CO	GC	GUIDANCE COUNSEL	811K	75	DSE

Allegation Information:

Complainant	Type	Subject
JETER ERNEST	EMPLOYEE MISCONDUCT	BROWN, BONNIE
JETER ERNEST	EMPLOYEE MISCONDUCT	ERBER, SUSAN

Findings

Substantiation Information

Subject	Type	Victim
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Case Results

Subject	Result
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Administrative Recommendations

Subject	Report Date	Followup Date	Final Date
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~~92-3065 R (OSI) BROWN~~

~~01-0516 R (OSI) BROWN~~

99-2449 R (OSI)
96-1843 R (OSI) } ASK
DAWE

Exhibit J

800.523.7887

06/23/2006, NY, NY, In the Matter of NYC Dept. of Ed. v Ernest Jeter,

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1 DeMarco - Cross - Glass
 2 * A. Some O.T.s and P.T.s.
 3 Q. Do you remember their names?
 4 A. No.
 5 MS. PEPE-SOUVENIR: I just
 6 needed a time frame --
 7 THE HEARING OFFICER: Object?
 8 MS. PEPE-SOUVENIR: -- as to
 9 what period he's referring to. Is he referring
 10 to this time --
 11 MR. GLASS: Yes.
 12 MS. PEPE-SOUVENIR: -- that
 13 Mr. -- Mr. Jeter's things were being reviewed
 14 or --
 15 THE HEARING OFFICER:
 16 Foundation?
 17 MS. PEPE-SOUVENIR: --
 18 another time frame?
 19 THE HEARING OFFICER:
 20 Foundation.
 21 BY MR. GLASS: (Cont'g.)
 22 Q. Well, what -- what school
 23 year did you review these other people's
 24 related-service books?

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1 DeMarco - Cross - Glass
 2 BY MR. GLASS: (Cont'g.)
 3 Q. Now, you have here, written
 4 on the side, that -- for example, no mandate
 5 listed or no effective language. Were you
 6 familiar with that book when you recorded
 7 those -- missing pieces -- we're -- we're
 8 doing --
 9 A. Yes.
 10 Q. -- R-Fifteen?
 11 A. Yes.
 12 Q. Okay. And are you familiar
 13 with the provision of the book that says
 14 that -- that as a pilot attendance-keeping
 15 program, providers only need to fill out the
 16 top of those forms as of the first month and
 17 then it carries over to subsequent months?
 18 A. It should go through on the
 19 carbon copies. It wasn't filled out on any of
 20 them.
 21 Q. Isn't it --?
 22 A. It all comes down -- well,
 23 it's like this. This the carbonized page, you
 24 write on this page and it goes through, and it

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1 DeMarco - Cross - Glass
 2 A. It was during the same school
 3 year that I was reviewing Mr. Jeter's book.
 4 Q. All right. I'm going to show
 5 you what -- D-B-Twenty -- or D-Twenty-seven-A,
 6 which I believe is one of the forms you filled
 7 out for October, that's in your handwriting.
 8 Checking the books?
 9 A. Uh-huh.
 10 Q. What -- just going back, the
 11 O.T.s and P.T.s, were there any other names you
 12 recall that -- when you reviewed?
 13 A. No, there were many, many of
 14 them and I don't recall their names.
 15 THE HEARING OFFICER: I'm
 16 sorry, is that -- you said DB-Twenty-eight?
 17 MR. GLASS: This was part of
 18 that big exhibit -- it's marked as --
 19 THE HEARING OFFICER: Oh,
 20 Twenty-seven-A?
 21 MR. GLASS: -- Twenty-seven.
 22 THE HEARING OFFICER: Okay.
 23 All right.
 24 MR. GLASS: Okay.

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1 DeMarco - Cross - Glass
 2 should all be on this page then.
 3 So if, on the first page, the
 4 first time you do the book, you fill out all of
 5 the information, it's documented on this page,
 6 which is why you don't have to repeat it,
 7 because then the next month the only piece that
 8 you do is the attendance, because all of that
 9 information is already permanently recorded on
 10 this -- that page.
 11 Q. You're saying as of October,
 12 did the -- did you have the September --
 13 there's been a concession in this case that the
 14 books -- are you aware -- was every one of Mr.
 15 Jeter's books correctly submitted to Source
 16 Corporation?
 17 A. I'm sorry. I don't
 18 understand the question.
 19 MS. PEPE-SOUVENIR: I don't
 20 understand it.
 21 THE HEARING OFFICER: Well,
 22 the -- Ms -- Ms. Pepe-Souvenir, if the witness
 23 doesn't understand, that's -- she'll say so.
 24 Otherwise, unless there's some other objection,

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1 DeMarco - Cross - Glass
 2 that class had science, so that's where they
 3 would be.
 4 Q. Okay. And they -- but they
 5 may have been with three or four different
 6 teachers during a school day, correct?
 7 A. During a day, absolutely.
 8 It's a reflected high school setting.
 9 Q. In the class that the E. boys
 10 were in, did they also have like a -- was there
 11 also classroom para in that class?
 12 A. Yes.
 13 Q. Do you remember who that was
 14 in the --?
 15 A. No, it changes. M. was in a
 16 six-one-one class, and G. was in twelve-one-one
 17 class.
 18 Q. So those classrooms would
 19 have a teacher, a classroom para and perhaps a
 20 one-to-one para?
 21 A. Perhaps a one-to-one.
 22 Q. And both of those boys
 23 required one-to-one, do you recall?
 24 A. I'm pretty sure M. had a

1 DeMarco - Cross - Glass
 2 one-to-one. I don't remember if G. did.
 3 Q. Okay. And when you got the
 4 sign-in -- sign-in/sign-out sheets, did you
 5 look for other irregularities among
 6 providers -- as to whether they were properly
 7 filling them out?
 8 A. Not specifically. At one
 9 point during the school year we collected
 10 everyone's books and crosschecked. We picked a
 11 starting day, and Ms. Henderson and Mr. Bennet
 12 crosschecked those -- the documents for all the
 13 related-service providers.
 14 Q. Are the related-service
 15 providers mandated to take the students out of
 16 the classroom for one -- you know, one-to-one
 17 counseling?
 18 A. Counseling was usually out of
 19 the classroom. It's not usually pushing.
 20 Q. And that would --
 21 A. It's in the privacy --.
 22 Q. -- would that have been the
 23 speech therapist as well?
 24 A. Just on speech, the model for

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1 DeMarco - Cross - Glass
 2 district seventy-five really encourages push-in
 3 for the students to use language appropriately
 4 in an appropriate setting.
 5 Q. Do you recall -- Ms. Santa
 6 Antonio as one of the providers?
 7 A. Sounds familiar.
 8 Q. Did you notice any
 9 irregularity in the way she was filling out the
 10 sign-in/sign-out sheet?
 11 A. I --.
 12 MS. PEPE-SOUVENIR:
 13 Objection. That isn't irrelevant to the
 14 charges.
 15 THE HEARING OFFICER: Well,
 16 let's -- let's start with -- she said it sounds
 17 familiar, which -- and I'm not sure what that
 18 means. I'm not sure whether it's a basis for
 19 asking questions about the person.
 20 MR. GLASS: It would be in --
 21 it's in the paperwork.
 22 BY MR. GLASS: (Cont'g.)
 23 Q. Take a look at the October
 24 25th, 29th, 2004 sign-in sheet for Mrs.

1 DeMarco - Cross - Glass
 2 DeMartino's (phonetic spelling) class. It
 3 would probably be part of -- it's in that --
 4 it's in that -- it's in that packet of
 5 documents for that week.
 6 THE HEARING OFFICER: Okay.
 7 Okay. It's in -- so, it's in D-Twenty-seven?
 8 MR. GLASS: Yes.
 9 THE HEARING OFFICER: Okay.
 10 MR. GLASS: But I'm showing
 11 her one of the pages --
 12 THE WITNESS: Uh-huh.
 13 MR. GLASS: -- from that
 14 packet.
 15 BY MR. GLASS: (Cont'g.)
 16 Q. Is that a typical sign-in
 17 sheet?
 18 MS. PEPE-SOUVENIR: I missed
 19 the -- I -- was there --
 20 A. Yes, it is.
 21 MS. PEPE-SOUVENIR: -- I'm
 22 sorry. Was there a ruling on my objection --
 23 THE HEARING OFFICER: Okay.
 24 That's --

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1 DeMarco - Cross - Glass
 2 MS. PEPE-SOUVENIR: -- as to
 3 relevance.
 4 THE HEARING OFFICER: --
 5 well, let's -- let -- let's see if she -- if
 6 she first can establish that she knows -- that
 7 he can establish that he -- that she knows the
 8 person --
 9 THE WITNESS: Yes.
 10 THE HEARING OFFICER: --
 11 which would be a basis for asking questions,
 12 and then we'll get to the relevance of the
 13 question.
 14 MS. PEPE-SOUVENIR: Okay.
 15 BY MR. GLASS: (Cont'g.)
 16 Q. Okay. So, do you -- do you
 17 recognize that sheet?
 18 A. Yes.
 19 Q. And does that refresh your
 20 recollection of who Santa Antonio is?
 21 A. Yes.
 22 Q. Who -- who is she?
 23 A. She's -- I believe, a speech
 24 therapist, and I think her first name is

1 DeMarco - Cross - Glass
 2 Melissa. I'm not -- I'm not entirely sure.
 3 Q. Okay. Would she have
 4 services -- would she have a mandate to service
 5 individual students?
 6 A. Yes.
 7 Q. I notice it says on that
 8 sheet, class. Is that an appropriate use of a
 9 sign-in sheet?
 10 A. She most likely was push-in.
 11 Speech was push-in. Speech Therapists did not
 12 have a private office, only our guidance
 13 counselors did. Speech provider worked in the
 14 classroom with the students.
 15 Q. But would she have a mandate
 16 to service individual students?
 17 A. Yes.
 18 Q. Did you ever question her as
 19 to how she -- why she was filling out "class"
 20 on this?
 21 MS. PEPE-SOUVENIR:
 22 Objection, relevance.
 23 THE HEARING OFFICER: Okay.
 24 Mr. Glass?

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1 DeMarco - Cross - Glass
 2 MR. GLASS: Well, part of the
 3 theory is that he is being scrutinized
 4 differently than other people and so this goes
 5 to you know -- the question of sign-in sheets,
 6 there's been some testimony that she reviewed
 7 that, her concerns, and we're trying to show
 8 that it wasn't always consistent, whether
 9 she --
 10 THE HEARING OFFICER: I -- I
 11 think it's relevant, at least as background
 12 evidence.
 13 MR. GLASS: And it -- this
 14 document is in evidence.
 15 THE HEARING OFFICER: Okay.
 16 BY MR. GLASS: (Cont'g.)
 17 Q. Okay. Did you ever question
 18 Ms. Santa Antonio about her filling out the
 19 sign-in sheets?
 20 A. No.
 21 Q. Do you know if anyone else
 22 ever questioned her about that?
 23 A. I wouldn't know. I was only
 24 directed to monitor Mr. Jeter's sheets.

1 DeMarco - Cross - Glass
 2 Q. Do you know someone named
 3 Rochelle?
 4 A. Yes.
 5 Q. Okay. Was she -- was she a
 6 mandated one-to-one provider?
 7 A. I don't know what exactly
 8 her -- whether she was listed as a
 9 one-to-one -- I believe she may have been
 10 listed on the organization under that. She was
 11 in the main office.
 12 Q. Who made the decision to
 13 assign her to the main office as opposed to as
 14 a one-to-one service --?
 15 MS. PEPE-SOUVENIR:
 16 Objection, relevancy to the charges.
 17 MR. GLASS: Well, it's
 18 particularly relevant to Ms. Copenny's charge
 19 that was charged in here about Mr. Jeter
 20 raising a concern about what Ms. Kirshbalm was
 21 doing.
 22 MS. PEPE-SOUVENIR: That was
 23 never -- as far as direct. That was not --
 24 THE HEARING OFFICER: Go

red
not
questions
speech
notes
→
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1 DeMarco - Cross - Glass
 2 even though you think it's vague, then your
 3 responsibility on redirect examination is to
 4 clear up the ambiguity.
 5 MS. PEPE-SOUVENIR: Here's
 6 the thing though, when I say that a question --
 7 I don't understand the question, I'm not saying
 8 it in the position of the witness, answering
 9 for the witness.
 10 THE HEARING OFFICER: Right.
 11 MS. PEPE-SOUVENIR: I'm
 12 saying that I don't understand the question
 13 because either I need to make an objection to
 14 the question, or if the question is not
 15 objectionable at all, if it's just made clearer
 16 then we can just move on.
 17 THE HEARING OFFICER: Yeah.
 18 MS. PEPE-SOUVENIR: So, my
 19 thing is not that -- I don't want the -- the --
 20 the witness to go ahead and answer.
 21 THE HEARING OFFICER: Right.
 22 MS. PEPE-SOUVENIR: She may
 23 very well understand what it is.
 24 THE HEARING OFFICER: Right.

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1 DeMarco - Cross - Glass
 2 MS. PEPE-SOUVENIR: And she
 3 may very well just go ahead and answer.
 4 THE HEARING OFFICER: Right.
 5 MS. PEPE-SOUVENIR: But if
 6 I'm not given the chance to say I don't
 7 understand the question, if you could make it
 8 clearer before I can make my objection --
 9 THE HEARING OFFICER: Right.
 10 MS. PEPE-SOUVENIR: -- that's
 11 my concern.
 12 THE HEARING OFFICER: I
 13 think -- I think that's a redirect examination
 14 issue. I mean, foundation is another kind of
 15 objection you can make.
 16 MS. PEPE-SOUVENIR: Uh-huh.
 17 THE HEARING OFFICER: But, I
 18 think that, other than the -- the sort of
 19 conventional objections to the form of the
 20 question, or to the content of the question
 21 even, then you're left, on redirect to clear up
 22 any ambiguity. You know, that's -- that's --
 23 that's the -- the order of the process.
 24 But it's certainly

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1 DeMarco - Cross - Glass
 2 inappropriate to -- to interfere with an
 3 examination. And -- and -- and lawyers do it,
 4 but -- but just to say I don't understand the
 5 question, I mean, that's really between the
 6 witness and the examiner.
 7 MS. PEPE-SOUVENIR: Okay.
 8 THE HEARING OFFICER: And --
 9 but -- and but -- I mean, you have tools that
 10 will allow you to clear all that up. It's just
 11 in the interest of order, using those tools,
 12 rather than interrupting the questioning.
 13 MS. PEPE-SOUVENIR: And just
 14 note my objection for the last --
 15 THE HEARING OFFICER: Yes,
 16 okay.
 17 MS. PEPE-SOUVENIR: --
 18 decision.
 19 THE HEARING OFFICER: Duly
 20 noted.
 21 BY MR. GLASS: (Cont'g.)
 22 Q. You know, I was asking a
 23 question about, did you have any role in Ms.
 24 Kirshbalm assignment to the office?

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1 DeMarco - Cross - Glass
 2 **A. No.**
 3 Q. Do you know who made that
 4 assignment?
 5 **A. Ms. Henderson.**
 6 Q. Okay. Do you know if that
 7 was in violation of the -- what Ms. -- Ms.
 8 Kirshbalm's job was? To assign her to do
 9 paperwork when she was to be a one-to-one?
 10 **A. That was Ms. Henderson's,**
 11 **decision not mine.**
 12 Q. So, I believe your previous
 13 testimony was as far as the -- the -- the logs,
 14 and the creation of these logs, that the --
 15 that you were doing for October, you were
 16 really only doing it for Mr. Jeter; you weren't
 17 doing that regularly for any other provider?
 18 **A. Correct.**
 19 Q. Okay. So, you don't know if
 20 other providers were leaving the top form empty
 21 or --?
 22 **A. I was not reading any of**
 23 **them.**
 24 Q. Okay. You said you had some

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1 DeMarco - Cross - Glass
 2 familiarity with the counselor and clinician's
 3 daily log. Let me just show you what's --
 4 already in as R-Sixty-nine through Seventy-two.
 5 If you could just look at the comments on the
 6 top of those forms.
 7 **A. Uh-huh.**
 8 Q. Do you recall seeing those
 9 logs from Jeter?
 10 **A. No.**
 11 Q. Okay.
 12 **A. I don't think at this point I**
 13 **was monitoring them anymore.**
 14 Q. Does it appear that someone
 15 else may have been monitoring them at that
 16 point?
 17 **A. I wouldn't know.**
 18 Q. Were you aware that at some
 19 point you were relieved of that duty and
 20 someone else was assigned to --
 21 **A. I was not --**
 22 Q. -- look at logs?
 23 **A. -- I was not informed.**
 24 Q. Okay. I'm going to show you

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1 DeMarco - Cross - Glass
 2 R-Seventy-three. This is an e-mail. Have you
 3 seen that e-mail before?
 4 **A. It wasn't sent to me.**
 5 Q. Did you ever see that e-mail?
 6 **A. I -- I really don't know.**
 7 Q. So that -- so, as of December
 8 and January, you were still involved in --?
 9 **A. Absolutely.**
 10 Q. And this was at Ms. -- Ms.
 11 Dreyfus' request?
 12 **A. Yes. And Ms. Henderson.**
 13 Q. Show you R-Seventy-five.
 14 Wondering if you've seen this?
 15 **A. No, I've never seen it.**
 16 Q. Were you ever called to any
 17 kind of grievance meeting with --
 18 **A. Yes.**
 19 Q. -- regarding Mr. Jeter?
 20 **A. No.**
 21 Q. Were you ever told that a
 22 grievance had been filed against you?
 23 **A. No.**
 24 Q. On the

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1 DeMarco - Cross - Glass
 2 related-service-attendance cards in that book,
 3 did you ever any make any marks on Mr. Jeter's
 4 cards yourself? You have to yes or no for the
 5 record.
 6 **A. No.**
 7 THE HEARING OFFICER: In that
 8 book, you're referring to --?
 9 MR. GLASS: The yellow book
 10 for -- for a particular student.
 11 THE HEARING OFFICER: What's
 12 the number on the yellow book?
 13 MR. GLASS: R-Fifteen.
 14 THE HEARING OFFICER:
 15 R-Fifteen, okay.
 16 **A. (Cont'g.) I don't believe**
 17 **so. I -- it wouldn't have been appropriate.**
 18 BY MR. GLASS: (Cont'g.)
 19 Q. That was for Mr. Jeter to
 20 correct?
 21 **A. Correct.**
 22 Q. Okay. Now, these -- these
 23 long log sheets that we were looking at, that
 24 are part of D-Twenty-seven, did you provide

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1 DeMarco - Cross - Glass
 2 those to Mr. Jeter at anytime?
 3 **A. At times I gave him copies.**
 4 Q. The complete log sheet?
 5 **A. My cover sheets.**
 6 Q. What? Showing which teachers
 7 were missing?
 8 **A. Uh-huh.**
 9 Q. Do you have anything in
 10 writing to show that you gave them to Mr.
 11 Jeter?
 12 **A. No, I don't.**
 13 Q. And how -- how often did you
 14 do that?
 15 **A. Often when I returned the**
 16 **books. I did not do it consistently. My goal**
 17 **was to have them correct, and to make sure**
 18 **students were served. That was my only**
 19 **function.**
 20 Q. And you recall specifically
 21 giving Mr. Jeter those -- the long forms or
 22 those forms comparing the -- his logs to the
 23 related-service-attendance book?
 24 **A. At times I would put them in**

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1 DeMarco - Cross - Glass
 2 of service.
 3 Q. Okay. So, it could be even
 4 like a -- it may take a few weeks for the
 5 school to -- allocate when the service will
 6 start?
 7 A. It -- it -- there may be some
 8 time. I don't think there would be a few
 9 weeks, but there might be a few days lag from
 10 when we -- we're notified that a student is
 11 unserved, or receiving counseling, to the
 12 actual assignment.
 13 Q. Okay. And is there -- do
 14 you -- do you know -- so these students may
 15 have different start dates --
 16 A. Yes.
 17 Q. -- correct?
 18 Did you start to fill in
 19 start dates later in these forms?
 20 A. I did not.
 21 Q. Did you know what start dates
 22 were at the time that you were doing these for
 23 him? I mean, did you understand --
 24 A. When I --

1 DeMarco - Cross - Glass
 2 Q. -- the concept of start date?
 3 A. Yes. When I created the
 4 schedule no student had been picked up yet.
 5 Q. You were -- you were first
 6 creating it, but --?
 7 A. When I created it in
 8 September no student had been picked up yet.
 9 Q. Okay. So, would -- wouldn't
 10 you need to give Mr. Jeter a start date to
 11 start his pick-ups?
 12 A. No, Mr. Jeter's start date is
 13 the first date he picks up the student. So, he
 14 generates the start date.
 15 Q. But you were creating these
 16 schedules for him to see the students, so
 17 you -- were you creating the start -- start
 18 dates based on their I.E.P.s?
 19 A. The start date is the first
 20 day the student attends in school and is picked
 21 up by the provider.
 22 Q. And Mr. Jeter was assigned to
 23 these particular students as of the date you
 24 gave him the first schedule; correct?

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1 DeMarco - Cross - Glass
 2 A. Correct.
 3 Q. Okay. And Mr. Lent would
 4 have had a similar schedule for his students?
 5 A. Correct.
 6 Q. Okay. Did you look at any of
 7 Mr. Lent's sign-out logs in September 2004, to
 8 see if he was servicing the E. boys?
 9 A. I know he was assigned the E.
 10 boys. I had seen that; I had seen his
 11 schedule. I looked at his schedule, yes.
 12 Q. Did you review his
 13 sign-out -- the sign-out logs?
 14 A. No, I was not directed to.
 15 Q. Okay. And you're not certain
 16 whether he was signing in or signing out those
 17 boys early in September of 2004?
 18 A. No, but I did collect all the
 19 sign-in/sign-out logs.
 20 MR. GLASS: I'm not sure we
 21 have this in at some -- at this point. Mr.
 22 Jeter just gave me this document. I'm going to
 23 show her -- let me just mark it, to be safe, as
 24 my next.

1 DeMarco - Cross - Glass
 2 THE HEARING OFFICER:
 3 Certainly. You haven't introduced anything
 4 today; right?
 5 MR. GLASS: No, I haven't.
 6 MS. PEPE-SOUVENIR: No.
 7 THE HEARING OFFICER: Okay.
 8 So, I think it's Seventy-nine.
 9 MR. GLASS: I'm going to show
 10 her two documents that Mr. Jeter handed me
 11 during the break, so I don't have copies yet,
 12 but R-Seventy-nine and R-Eighty, I'll mark
 13 them.
 14 THE HEARING OFFICER: Okay.
 15 MS. PEPE-SOUVENIR: Okay.
 16 MR. GLASS: Do you want to --
 17 I'm going to give this to the witness, but --.
 18 THE HEARING OFFICER: Okay.
 19 Go ahead.
 20 BY MR. GLASS: (Cont'g.)
 21 Q. So, R-Seventy-nine, is that
 22 another schedule that you created for Mr.
 23 Jeter?
 24 A. Yes.

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1 DeMarco - Cross - Glass
 2 Q. That's your handwriting?
 3 A. Yes.
 4 Q. Okay. And this is as of
 5 3/21/05, I believe, on the top?
 6 A. Uh-huh.
 7 Q. Okay. At that point you
 8 still were not putting start dates in his
 9 schedules?
 10 A. No, I was just adding two
 11 more students to his caseload.
 12 Q. Okay. And --?
 13 A. It wasn't my job to put in
 14 the start dates. That's the guidance
 15 counselor's responsibility.
 16 Q. Was he directed to fill out
 17 the start dates?
 18 A. I assume that the director of
 19 counseling would direct any related-service
 20 provider.
 21 Q. This is for your
 22 identification to fill-out these sheets;
 23 correct?
 24 A. No, I wasn't. I was

1 DeMarco - Cross - Glass
 2 designated to give him a schedule. I did this
 3 part, where -- all the names and OSIS (phonetic
 4 spelling) numbers, that was a courtesy I did
 5 for him. I was designated to give him a
 6 schedule.
 7 Q. Okay.
 8 A. And I gave him all the
 9 information with the student's mandates and
 10 their I.D. numbers.
 11 Q. Is everything on
 12 R-Seventy-nine your handwriting?
 13 A. Yeah.
 14 Q. So, you -- so, you wrote down
 15 all the names of the students and you -- then
 16 you actually created the schedule on the
 17 left-hand side; correct?
 18 A. Yes, I did.
 19 Q. And you just didn't fill out
 20 the start dates because you thought that was
 21 his --?
 22 A. I know it's his
 23 responsibility.
 24 Q. Okay. But everything else on

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1 DeMarco - Cross - Glass
 2 the form was your responsibility at this time?
 3 A. Just the schedule, but I gave
 4 him all the additional information, to be
 5 proactive so I wouldn't be told that he doesn't
 6 have their information, like their mandate or
 7 their I.D. number.
 8 Q. But you didn't think the
 9 start date was something that was within your
 10 purview?
 11 A. It's not. I'm not --
 12 MS. PEPE-SOUVENIR:
 13 Objection.
 14 A. (Cont'g.) -- the person
 15 who --
 16 MS. PEPE-SOUVENIR: Asked and
 17 answered.
 18 THE HEARING OFFICER:
 19 Sustained. Sustained. Asked and answered
 20 several times.
 21 MS. PEPE-SOUVENIR: You're
 22 like, badgering now.
 23 MR. GLASS: I'd like to --
 24 I'd like to move that into evidence.

1 DeMarco - Cross - Glass
 2 THE HEARING OFFICER: Any
 3 objection?
 4 MS. PEPE-SOUVENIR: No.
 5 THE HEARING OFFICER: Okay.
 6 Received.
 7 THE REPORTER: I apologize.
 8 Just so I'm clear, and the record's clear, you
 9 said this is R-Seventy-nine?
 10 MR. GLASS: I believe so. I
 11 was trying to get the next consecutive one.
 12 THE REPORTER: My -- my
 13 belief was that Seventy-nine was the e-mail
 14 from Ms. DeMarco.
 15 MR. GLASS: Okay.
 16 THE HEARING OFFICER: Okay.
 17 Thank you, Mr. Streu. You may --
 18 MS. PEPE-SOUVENIR: Thank
 19 you.
 20 THE HEARING OFFICER: -- be
 21 right.
 22 MR. GLASS: And we'll call
 23 that R-Eighty, then.
 24 THE HEARING OFFICER: Is that

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1 DeMarco - Cross - Glass
 2 the last one you have, Mr. Streu?
 3 THE REPORTER: I'm sorry?
 4 THE HEARING OFFICER: Is --
 5 is R-Seventy-nine, the e-mail, the last one
 6 that you have?
 7 THE REPORTER: Yes.
 8 THE HEARING OFFICER: Okay.
 9 (Off-the-record discussion)
 10 THE HEARING OFFICER: Thank
 11 you very much. So, that's Eighty and
 12 Eighty-one.
 13 MR. GLASS: Okay. Now I'm
 14 going to show you R-Eighty-one.
 15 MS. PEPE-SOUVENIR: For
 16 identification?
 17 MR. GLASS: For
 18 identification.
 19 BY MR. GLASS: (Cont'g.)
 20 Q. Can you -- do you -- first of
 21 all, do you know a student named Ar.Se., she
 22 was a student there?
 23 A. Yes.
 24 Q. Okay. Do you recognize what

1 DeMarco - Cross - Glass
 2 this form is?
 3 A. Yes, it's the page that
 4 designates what their counseling, what their
 5 related-service mandate was.
 6 Q. Did this student have
 7 speech --?
 8 A. Apparently. It's listed on
 9 the related-service page, that she has a
 10 mandate of two sessions per week for thirty
 11 minutes in a group of three.
 12 Q. And that would be a pull-out
 13 session?
 14 A. Speech at Eight Eleven was
 15 push-in.
 16 MR. GLASS: Now, first of all
 17 I'd like to move this is into evidence, then
 18 I'll ask her questions about it --.
 19 THE HEARING OFFICER: Any
 20 objection?
 21 MS. PEPE-SOUVENIR:
 22 Objection, relevancy.
 23 THE HEARING OFFICER: Mr.
 24 Glass.

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1 DeMarco - Cross - Glass
 2 MR. GLASS: She said push-in
 3 and I have some questions about this form
 4 about, you know, what is appropriate. You
 5 know, it has to do with the sign-out-logs issue
 6 as to -- when I asked briefly what class meant,
 7 you know, and -- so, it's following up on that.
 8 MS. PEPE-SOUVENIR: Well --,
 9 THE HEARING OFFICER: May I
 10 just take a look at it?
 11 THE WITNESS: Can I ask how
 12 much longer --
 13 THE HEARING OFFICER: Sure.
 14 THE WITNESS: -- we're going
 15 to be --?
 16 MR. GLASS: Well --.
 17 THE WITNESS: I'm missing my
 18 school's graduation as it is, and I would like
 19 to at -- get back to see the kids at least.
 20 THE HEARING OFFICER: Okay.
 21 I'm not sure how long we have, but let's go
 22 off-the-record for the moment, Mr. Streu.
 23 (Off-the-record discussion)
 24 THE HEARING OFFICER:

1 DeMarco - Cross - Glass
 2 Overrule the objection on that, go ahead.
 3 MS. PEPE-SOUVENIR: Well, if
 4 the questions are going to be as to the whole
 5 speech-therapy push-in -- push-in, it's been
 6 questioned -- asked about that and -- and
 7 answered about that. I don't know if you need
 8 that document to ask those very questions. I
 9 don't see the relevancy of this document at
 10 all.
 11 If the questions are simply
 12 about what the speech teacher does and if she
 13 pushes-in, pushes-out, that was already
 14 discussed and I don't think this document is
 15 going to add anything to it. I don't see the
 16 relevance of the document and I -- I would
 17 object to it coming in.
 18 THE HEARING OFFICER: Okay.
 19 I'm -- I'm going to overrule the objection as
 20 to relevancy. I don't think it's cumulative.
 21 If it becomes so we'll revisit that.
 22 Go ahead.
 23 MR. GLASS: All right.
 24 BY MR. GLASS: (Cont'g.)

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1 DeMarco - Cross - Glass
 2 Q. I'm showing you R-Eighty-one,
 3 which is now in evidence. I notice on the
 4 first line it does say separate, for speech
 5 provider, does that signify that the student
 6 should be removed from the class?
 7 A. As per the school policy for
 8 speech in district seventy-five they adhere to
 9 a more push-in model. We have speech teachers
 10 who are in the classroom.
 11 Q. And that was in every case,
 12 or that's only because of the space
 13 limitations?
 14 A. I -- I've seen it in many
 15 schools. It was not only in Eight Eleven.
 16 Q. So, speech provider focus is
 17 inside the classes?
 18 A. Some do, some don't, but at
 19 Eight Eleven it was push-in.
 20 MS. PEPE-SOUVENIR: Okay.
 21 I'm going to object to the relevance. To this
 22 whole --
 23 THE HEARING OFFICER: Over --
 24 MS. PEPE-SOUVENIR: -- line

1 DeMarco - Cross - Glass
 2 about the push-in, push --
 3 THE HEARING OFFICER: --
 4 over --
 5 MS. PEPE-SOUVENIR: -- of the
 6 speech teacher. What does it have to do with
 7 the charges?
 8 THE HEARING OFFICER:
 9 Overruled.
 10 BY MR. GLASS: (Cont'g.)
 11 Q. And that was -- and that was
 12 their policy to explain how you came by saying
 13 that there should be provided separate
 14 services?
 15 A. That was -- It's -- that was
 16 speech services in district seventy-five
 17 policy -- and well, I don't know district
 18 seventy-five. It was speech policy at Eight
 19 Eleven that our speech therapists did push-in.
 20 MR. GLASS: One more minute,
 21 there may be a final question.
 22 THE HEARING OFFICER: How
 23 long?
 24 MR. GLASS: Just two minutes,

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1 DeMarco - Redirect - Pepe-Souvenir
 2 that's all.
 3 THE HEARING OFFICER: Okay.
 4 But let's limit it to two minutes, if we can.
 5 THE WITNESS: This is so
 6 unfair. I missed my school's graduation. You
 7 know.
 8 MS. PEPE-SOUVENIR: I'm so
 9 sorry, Ms. DeMarco.
 10 THE HEARING OFFICER: Off --
 11 off the record, Mr. Streu.
 12 (Off-the-record discussion)
 13 REDIRECT EXAMINATION
 14 BY MS. PEPE-SOUVENIR:
 15 Q. Ms. DeMarco, looking at what
 16 has been marked Respondent's-Seventy-nine,
 17 dated May 28th of 2004, was Mr. Jeter assigned
 18 to Eight Eleven K during May 20th -- sorry
 19 September 28th of 2005?
 20 A. I don't -- I'm not quite sure
 21 when he was removed, but I believe it was
 22 before that.
 23 Q. Do you have any idea how --
 24 was this a -- a public e-mail that was sent to

1 DeMarco - Redirect - Pepe-Souvenir
 2 everyone?
 3 A. I have no idea how Mr. Jeter
 4 came into possession of my private, personal,
 5 secure Board of Ed e-mail, which I have never
 6 given anyone my password, my PIN, any of my
 7 confidential information.
 8 Q. Is any of the information
 9 within the e-mail related to Mr. Jeter?
 10 A. No.
 11 Q. And is there anything in the
 12 e-mail that would be considered -- withdrawn.
 13 Now you asked during
 14 cross-examination about issues that you have
 15 with Mr. Jeter. Could you just explain to us
 16 exactly what the issues are that -- were that
 17 you had with Mr. Jeter, during this period of
 18 time when you had to collect his data?
 19 A. It very quickly became very
 20 adversarial. He was resistant to give me the
 21 documents in a timely manner, which is why Ms.
 22 Henderson stepped in. I would pass him in the
 23 hall, say hello and he would ignore me. He
 24 wouldn't talk to me. If I asked him to add a

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1 DeMarco - Redirect - Pepe-Souvenir
2 student to his caseload, he would not take any
3 direction except in writing. If I had to meet
4 with him to discuss anything, he would refuse
5 and tell me he needed union representation and
6 would not speak to me. Everything was a very
7 big deal.

8 Q. Okay. Do you recall one
9 instance where you attempted to get documents
10 from Mr. -- Mr. Jeter, and he had a
11 conversation with you, in November of 2004?

12 A. Was it the -- I -- I don't
13 know if you're referring to the Nazi comment,
14 about Nazi Germany, there was a --.

15 Q. Well, tell us about that
16 conversation.

17 A. We were in the stairwell and
18 it was -- I don't know what it was directly
19 after, but I had interacted with him in the
20 stairwell and I said something to the effect of
21 look, you know, don't shoot me. I'm just the
22 messenger. My role here is -- is following
23 directions from my supervisor and -- an
24 collecting this information.

1 DeMarco - Redirect - Pepe-Souvenir
2 And he made some kind of
3 comment about that's what they said in -- in
4 Nazi Germany, that they were only following
5 directions. And -- and you're a smart girl,
6 you know what that means, kind of thing. I
7 don't remember specifically, but I was really
8 uncomfortable and I wrote it up. I was -- I
9 was uncomfortable.

10 MS. PEPE-SOUVENIR: I
11 unfortunately don't remember our last document
12 number but I'd like to have this marked,
13 Department of Education's --?

14 THE HEARING OFFICER: Let me
15 see.

16 A thought, before you go.
17 On that last exchange that
18 you referred to, what's the date of that, do
19 you recall?

20 THE WITNESS: I don't recall.

21 THE HEARING OFFICER: Okay.

22 THE WITNESS: And I wrote it
23 up, I don't know if the date's on it, but I
24 wrote an anecdotal and I shared it with Ms.

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1 DeMarco - Redirect - Pepe-Souvenir
2 Henderson and Dr. Dreyfus.

3 THE HEARING OFFICER: Okay.

4 MR. GLASS: Actually, you
5 know, this -- I have to lodge an objection at
6 this point. I mean, this is sort of what we've
7 been through here in the past. This is -- the
8 first thing is -- is coming back with new
9 documents that have not been provided in
10 Discovery, trying to establish a tendency to
11 behave in a certain way --

12 THE HEARING OFFICER: I'm
13 sorry.

14 MR. GLASS: -- not to
15 provide --

16 THE HEARING OFFICER: What --
17 but what are you objecting to?

18 MR. GLASS: Well, the -- the
19 introduction of this very vivid --

20 THE HEARING OFFICER: Oh.
21 Oh, well, let's -- we'll -- we'll get to that.
22 You'll have a chance at the appropriate time.
23 The -- the number is Thirty-six.

24 MS. PEPE-SOUVENIR: Thank

1 DeMarco - Redirect - Pepe-Souvenir
2 you. Thirty-six for identification.

3 BY MS. PEPE-SOUVENIR: (Cont'g.)

4 Q. Can you identify that
5 document that has been marked Department of
6 Education's Thirty-six for identification?

7 A. Yes.

8 Q. What is that document?

9 A. I wrote an anecdotal of what
10 exactly -- you know, what Mr. Jeter had said to
11 me that afternoon, because I was pretty
12 uncomfortable. And when I shared it with Dr.
13 Dreyfus she asked for copies.

14 Q. And you wrote this yourself?

15 A. Yes, I did.

16 Q. And this is your recollection
17 of what took place on that day?

18 A. I wrote it that day.

19 MS. PEPE-SOUVENIR: Okay.
20 I'd like to have this moved into evidence as
21 Department of Education's Thirty-six, please?

22 THE HEARING OFFICER: Any
23 objection?

24 MR. GLASS: I think I do.

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1 DeMarco - Redirect - Pepe-Souvenir
 2 Let me speak to Mr. Jeter about it. It's the
 3 first time I've seen it.
 4 THE HEARING OFFICER: Okay.
 5 MR. GLASS: It was not
 6 provided at the beginning of the day --.
 7 MS. PEPE-SOUVENIR: I believe
 8 it was in all the documents that you received.
 9 MR. GLASS: I can absolutely
 10 assure you it was not in -- in the
 11 documents --.
 12 THE HEARING OFFICER: Well,
 13 okay. Let's --
 14 MS. PEPE-SOUVENIR: Well --
 15 THE HEARING OFFICER: --
 16 let's just --
 17 MS. PEPE-SOUVENIR: What?
 18 THE HEARING OFFICER: --
 19 focus on --
 20 MR. GLASS: Well, I think --
 21 THE HEARING OFFICER: --
 22 whether he has --
 23 MR. GLASS: -- it should be
 24 on the --

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1 DeMarco - Redirect - Pepe-Souvenir
 2 THE HEARING OFFICER: -- an
 3 objection.
 4 MR. GLASS: -- record,
 5 though, that --.
 6 THE HEARING OFFICER: Yeah,
 7 I'm sure -- it's on the record.
 8 MR. GLASS: This is about the
 9 third time it's happened.
 10 THE HEARING OFFICER: Mr.
 11 Streu?
 12 THE REPORTER: Yes, sir.
 13 THE HEARING OFFICER: We're
 14 off the record just, probably, for a minute.
 15 (Off-the-record discussion)
 16 THE HEARING OFFICER: Any
 17 objection, Mr. Glass?
 18 MR. GLASS: I mean, I have to
 19 lodge an objection. I mean, I'm not sure
 20 the -- what the point of bringing this in.
 21 Number one, it could have
 22 come up on direct testimony. There's nothing
 23 in cross that makes her all of a sudden start
 24 to talk about why she has to bring this in now.

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1 DeMarco - Redirect - Pepe-Souvenir
 2 Number two, it was never
 3 provided to us.
 4 Number three, it's not
 5 charged in this case.
 6 Number four, it -- it's
 7 consistent with, you know, late -- late
 8 provision of documents that don't surface.
 9 Never -- number five, never
 10 provided to Mr. Jeter at any -- any -- any
 11 time. And you know, it's -- it's -- it could
 12 have been created yesterday for all I know.
 13 So, it's -- you know, it's
 14 not particularly relevant to the charges, it
 15 doesn't even -- it -- it's not even saying
 16 anything of misconduct. You know, now they'll
 17 say that this person feels threatened, because
 18 he made a comment. It's consistent with what
 19 happened at our last meeting, when Ms. Brown
 20 brings in something and says, "Oh, by the way
 21 he had another threatening incident."
 22 I mean, these are not charged
 23 things. They happened well before this case
 24 was -- to provide it. They extend the case,

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1 DeMarco - Redirect - Pepe-Souvenir
 2 and you know, it's just prejudicial. Just come
 3 in, you know, after the fact. I mean, why was
 4 it not on the direct case? Why was it not
 5 provided to me? Why -- why is it an issue now?
 6 THE HEARING OFFICER: Okay.
 7 Wait -- but the objection is as to the
 8 relevancy of it? I mean, the other discovery
 9 issues may be, obviously, a matter of concern
 10 between you, but --
 11 MR. GLASS: Well, that is
 12 a --.
 13 THE HEARING OFFICER: --
 14 but -- excuse me, let me finish.
 15 But the question here is
 16 whether this is relevant and the other
 17 legitimate objection is whether it's within the
 18 scope of -- of cross.
 19 So, those are the ones I'd
 20 like to have Ms. -- Ms. Pepe-Souvenir answer --
 21 respond to.
 22 MS. PEPE-SOUVENIR:
 23 Absolutely. The beginning of the
 24 cross-examination there were several questions

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1 DeMarco - Redirect - Pepe-Souvenir
 2 asked of Ms. DeMarco where she clearly
 3 intimated to the arbitrator during the hearing
 4 that she had a problem with Mr. Jeter, getting
 5 documents from Mr. Jeter, that the relationship
 6 was very -- there was a lot of tension in the
 7 relationship. It was hard for her to get
 8 documents, and these were questions that were
 9 brought out -- responses that were brought out
 10 by the questions Mr. Glass asked.
 11 If -- he's correct. During
 12 my direct examination I didn't ask her about
 13 the relationship with Mr. Jeter, the
 14 difficulties that she had. She made one
 15 comment, actually, during her direct
 16 examination, that there was a point in time
 17 when her relationship with Mr. Jeter got very
 18 tension-filled.
 19 But Mr. Glass, in his cross,
 20 asked several -- at least five questions, and
 21 I've noted them, as to issues, as to tensions
 22 she had, as to the difficulties she had with
 23 getting documents with him, as to the reason
 24 why she stopped being the one actually getting

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1 DeMarco - Redirect - Pepe-Souvenir
 2 they're -- they're relevant. But also, you
 3 know, there is -- there's the Discovery issue
 4 that's being glossed over again and again, and
 5 I think that should be under consideration --.
 6 THE HEARING OFFICER: Okay.
 7 Mr. -- Mr. Glass. I heard you on that. I
 8 don't want to take it up at this point. We can
 9 take that up at another point. That's fine.
 10 MR. GLASS: Just note for the
 11 record this is --
 12 THE HEARING OFFICER: Yeah.
 13 MR. GLASS: -- the third
 14 violation and it's an ongoing concern in this
 15 matter and --.
 16 THE HEARING OFFICER: All
 17 right. Fine. Let's -- let's not discuss it
 18 any further. That's duly noted.
 19 Go ahead, Ms. Pepe-Souvenir.
 20 BY MS. PEPE-SOUVENIR: (Cont'g.)
 21 Q. After having that
 22 conversation with Mr. Jeter in November of
 23 2004, did you have any subsequent conversation
 24 with Mr. Jeter in reference to documents that

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1 DeMarco - Redirect - Pepe-Souvenir
 2 the documents, that they were going to Ms.
 3 Henderson. And she was the one, Ms. Henderson
 4 would then give to her, or there would be
 5 another person in the loop, she wouldn't have
 6 to directly deal with Mr. Jeter.
 7 So, Mr. Glass opened the
 8 door, and this was an issue that came up during
 9 his cross, and I feel I have a perfect right to
 10 explore it further on redirect.
 11 THE HEARING OFFICER: I
 12 understand.
 13 MS. PEPE-SOUVENIR: And
 14 that's exactly what I'm doing.
 15 THE HEARING OFFICER: I'll
 16 overrule the objection. Go ahead.
 17 MS. PEPE-SOUVENIR: Thank
 18 you.
 19 THE HEARING OFFICER: Go
 20 ahead.
 21 MR. GLASS: Okay. I just
 22 would ask, though, I mean, if -- regardless as
 23 to whether what they're going to say may have
 24 an element of relevance -- I'm mean, as long as

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1 DeMarco - Redirect - Pepe-Souvenir
 2 he needed to give you?
 3 A. I tried not to really have
 4 conversations alone, and at that point anything
 5 I gave him was usually in writing, with either
 6 his union rep or somebody there.
 7 Q. Uh-huh. Okay. Now, was this
 8 the standard procedure when you would talk to
 9 a -- whether it be a teacher, whether it be a
 10 service provider, that they would have to have
 11 the union rep if you wanted to give them
 12 instructions as to what they needed to do
 13 procedurally within the school setting?
 14 A. I assume that it's their
 15 right to have -- my understanding is that they
 16 only need -- they're -- they're entitled to
 17 union representation if it's disciplinary. But
 18 my experience prior to this was that I -- I had
 19 never had to have a staff member have union
 20 representation just to get direction.
 21 Q. Okay. And as a result of Mr.
 22 Jeter always requiring to have union
 23 representation present when you had to give him
 24 instructions, did that delay having to give him

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1 DeMarco - Redirect - Pepe-Souvenir
 2 the stipulation that we have on that point.
 3 BY MS. PEPE-SOUVENIR: (Cont'g.)
 4 Q. Prior to Ms. Dreyfus having a
 5 conversation with Mr. Jeter in September -- you
 6 recall that --
 7 A. Yes.
 8 Q. -- correct?
 9 And you were with Ms. Dreyfus
 10 that morning?
 11 A. I believe it was more like
 12 lunchtime.
 13 Q. Okay. Lunchtime. Prior to
 14 her having the conversation with Mr. Jeter, had
 15 she, at any point, instructed you to follow-up
 16 on Mr. Jeter's documentation?
 17 A. No.
 18 Q. Okay. And her request for
 19 you to follow-up on Mr. Jeter's documentation
 20 only came after she had the conversation with
 21 Mr. Jeter, correct?
 22 A. Yes.
 23 Q. Okay. And you were present
 24 when she spoke to Mr. Jeter about the questions

1 DeMarco - Redirect - Pepe-Souvenir
 2 she had?
 3 A. With his schedule?
 4 Q. Uh-huh.
 5 A. Yes.
 6 Q. Okay. At any point in time
 7 did Mr. Jeter ever say to you that he could not
 8 provide the proper information in his
 9 related-service -- related-service forms or his
 10 counseling log or this -- the -- these
 11 sign-in/sign-out sheet, because you were
 12 holding onto his materials?
 13 A. Not that I recall.
 14 Q. And based on the -- the --
 15 the data, on average how long did it take you
 16 to go through Mr. Jeter's documentation in the
 17 comparison of the three documents?
 18 A. Maybe four hours, five hours.
 19 Q. All right.
 20 A. It was a lot of time.
 21 Q. And you did that on a weekly
 22 basis?
 23 A. Every week. It usually took
 24 up either all day Monday or all day Tuesday,

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1 DeMarco - Redirect - Pepe-Souvenir
 2 depending on when we got the book.
 3 Q. All right. And then you
 4 would turn around and then give it -- give the
 5 book back to Mr. Jeter?
 6 A. Yes.
 7 Q. Okay. Would you say that
 8 during the period of time when you were looking
 9 over Mr. Jeter's documentation, that he was
 10 singularly scrutinized more than any other
 11 service -- related-service provider?
 12 A. At the time, yes, but my
 13 understanding was that it was based on a
 14 reason.
 15 Q. Okay. Did you know what the
 16 reasons were? Were you at least aware of what
 17 the reasons were?
 18 A. There were concerns about him
 19 servicing students.
 20 Q. Whether or not Ms.
 21 Henderson -- well, withdrawn.
 22 You indicated that at one
 23 point in time there were some concerns about
 24 your time and attendance?

1 DeMarco - Redirect - Pepe-Souvenir
 2 A. Yes.
 3 Q. Okay. And that eventually
 4 those were unfounded?
 5 A. Yes.
 6 Q. Okay. Did your time and
 7 attendance at -- at all affect Mr. Jeter's --
 8 or your findings of Mr. Jeter's entries in his
 9 related-service card or his counseling log or
 10 his time -- sign-in/sign-out sheets.
 11 A. Not affected at all, no.
 12 Q. Okay. Did that affect
 13 your -- the errors that you would find, or the
 14 omissions that you would find, would that be
 15 related to you being on time or late at any
 16 point in time in your career?
 17 A. In my -- my recollection is
 18 it happened long after he was gone.
 19 Q. The attendance issue?
 20 A. Yes.
 21 Q. Okay. Was Mr. Jeter involved
 22 with you -- with your attendance issues? Did
 23 he make a complaint?
 24 A. I don't know.

*in regular
 scrutiny
 singularly*

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1 **DeMarco - Redirect - Pepe-Souvenir**
 2 Q. All right.
 3 **A. The only person I know made a**
 4 **complaint was Mr. Adolphe.**
 5 Q. Okay. At any point in time,
 6 when you checked over Mr. Jeter's
 7 documentation -- withdrawn.
 8 Now, you also indicated that
 9 Ms. Henderson did not leave the school
 10 voluntarily?
 11 **A. Correct.**
 12 Q. And that there was some
 13 complaints related to Ms. Henderson?
 14 **A. Correct.**
 15 Q. Okay. Did that -- those
 16 complaints relate at all to Mr. Jeter's -- to
 17 your reviewing Mr. Jeter's related-service
 18 cards, his sign-ins -- his sign-in/sign-out
 19 cards, or his counseling log? Were they
 20 related at all to that?
 21 **A. No, and I -- I'm not sure if**
 22 **Mr. Jeter was even still in the building at the**
 23 **time.**
 24 Q. At any point in time did you,

1 DeMarco - Redirect - Pepe-Souvenir
 2 Ms. Dreyfus, Ms. Henderson get together and
 3 decide that you were going to go after Mr.
 4 Jeter specifically?
 5 **A. No. Just to monitor students**
 6 **not being served.**
 7 Q. Okay. At any point in time
 8 was there a discussion to go after Mr. Jeter
 9 because he's black?
 10 **A. No.**
 11 Q. And that -- I'm relates --
 12 referring to any conversations between you, Ms.
 13 Henderson, and Ms. Dreyfus?
 14 **A. No. Ms. Henderson is black**
 15 **as well.**
 16 Q. Prior to coming to Eight
 17 Eleven K did you know Mr. Jeter?
 18 **A. No.**
 19 Q. Okay. And prior to you
 20 having to review Mr. Jeter's documentation,
 21 could you describe what kind of relationship
 22 you had with Mr. Jeter?
 23 **A. I really only interacted with**
 24 **him when students were in crisis, because he**

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Page 2715

1 **DeMarco - Redirect - Pepe-Souvenir**
 2 **was one of -- as a guidance counselor he worked**
 3 **with students in crisis, in conjunction with**
 4 **the -- the crisis teacher.**
 5 Q. Okay. At any point in time
 6 when you did work with Mr. Jeter, in
 7 conjunction with students having crisis, did he
 8 at all exhibit any kind of behavior that made
 9 you feel uncomfortable?
 10 **A. Not at that time.**
 11 Q. Okay. And is it your
 12 testimony that the only time that he did make
 13 you feel uncomfortable, or -- or exhibited
 14 behaviors that you described, was after you
 15 started reviewing his documentation and
 16 making -- pointing out to him the things that
 17 he needed to fix in his documentation?
 18 **A. Absolutely.**
 19 Q. And I know you've already
 20 testified about what has been moved into
 21 evidence as R-Seventy-nine, and you indicated
 22 that this was a private e-mail sent from your
 23 e-mail to this person. How does it make you
 24 feel, as you sit here today, this document

1 DeMarco - Redirect - Pepe-Souvenir
 2 being used during these 3020-a hearings?
 3 **A. Well, I'm concerned about**
 4 **someone having access to my Board of Ed e-mail.**
 5 **I really am feeling very violated, and**
 6 **personally I think I have some rights, but**
 7 **apparently I don't.**
 8 **And I'm concerned how someone**
 9 **got ahold of this e-mail. I -- I -- it's**
 10 **just -- I don't understand how someone could**
 11 **have access to e-mails that are**
 12 **password-protected when I certainly have never**
 13 **given anyone access to my e-mail account.**
 14 Q. Okay. Then you were also --
 15 also asked some questions about Ms. Kirshbalm
 16 being assigned to do something else. What
 17 exactly is Ms. Kirshbalm's title, if you could
 18 tell me?
 19 **A. Well, right now she's**
 20 **retired.**
 21 Q. But can --
 22 **A. But when she was there I**
 23 **believe she was listed as a paraprofessional.**
 24 Q. She was a paraprofessional.

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Associated Reporters Int'l., Inc.

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1 DeMarco - Redirect - Pepe-Souvenir
 2 Were you aware of this incident that took place
 3 in April, involving Mr. Jeter and Ms. Kirshbalm
 4 and Ms. Copenny?
 5 **A. Only through Ms. Copenny.**
 6 Q. And you testified that Ms.
 7 Kirshbalm's assignment that particular day was
 8 given to her by Ms. Henderson?
 9 **A. She had been in and out of**
 10 **classroom positions from the time I'd gotten**
 11 **there and I -- I don't know how long before,**
 12 **but that was -- that was Henderson, and how she**
 13 **had her school organized.**
 14 Q. Okay. At that point in time
 15 did Mr. Jeter -- was -- was it appropriate for
 16 Mr. Jeter, who was assigned to be someplace
 17 else, to make this complaint to Ms. Copenny at
 18 that point in time?
 19 **A. No.**
 20 Q. Okay. And why was it not
 21 appropriate?
 22 **A. The person who does staff**
 23 **assignments and staff designations is an**
 24 **administrator, not -- not anyone else.**

Page 2718

1 DeMarco - Redirect - Pepe-Souvenir
 2 **stayed pretty constant, unless a new student**
 3 **came or we received notification from the**
 4 **District about a student unserved counseling.**
 5 **And based on who had space in their schedule I**
 6 **would assign them to either Mr. Lent or Mr.**
 7 **Jeter.**
 8 Q. Okay. So, ordinarily, the --
 9 the schedule itself was made up by an
 10 administrator and then given to the
 11 related-service providers?
 12 **A. No. Normally they're made up**
 13 **by the provider, but Dr. Dreyfus had seen his**
 14 **initial schedule and -- and was very unhappy**
 15 **with it, and asked to me write it.**
 16 Q. Do you know why she was
 17 unhappy with his initial schedule?
 18 **A. He was assigned two sites,**
 19 **and she was concerned about him being out of**
 20 **the building.**
 21 Q. Okay. And you indicated that
 22 your only responsibility, then, would have been
 23 to just do this part -- ~~this portion of the~~
 24 schedule?

1 DeMarco - Redirect - Pepe-Souvenir
 2 Q. Had there any -- been -- been
 3 any complaints before, prior to Mr. Jeter's
 4 complaint, about Ms. Kirshbalm's position?
 5 **A. I don't know.**
 6 **MS. PEPE-SOUVENIR: Okay.**
 7 **Just give me a few minutes.**
 8 THE HEARING OFFICER: Okay.
 9 MS. PEPE-SOUVENIR: Oh, can I
 10 please show her what you have marked as Exhibit
 11 Eighty?
 12 BY MS. PEPE-SOUVENIR: (Cont'g.)
 13 Q. You were -- were you given a
 14 specific assignment to make Mr. Jeter's
 15 schedule?
 16 **A. Yes.**
 17 Q. How often would you have to
 18 do his schedule?
 19 **A. I -- you know, it got amended**
 20 **any time a new student needed to be added to**
 21 **his caseload. But I did the first one in**
 22 **September, and then added a student or made a**
 23 **correction, I'm not sure which in -- in the --**
 24 **the October one. And for the most part it**

Page 2719

1 DeMarco - Redirect - Pepe-Souvenir
 2 **A. Correct.**
 3 Q. Okay. But you proceeded to
 4 do the other portion of the schedule?
 5 **A. Correct.**
 6 Q. And why is it that you did
 7 the other portions of the schedule?
 8 **A. Because it gave all the**
 9 **pertinent information that he would need to**
 10 **fill out his related-service cards, and I --**
 11 **this way he wouldn't have to look them up.**
 12 Q. Okay. So, you were trying to
 13 help Mr. Jeter out?
 14 **A. Yes, I was.**
 15 Q. Okay. And you indicated that
 16 you didn't put a start date. Was that your
 17 responsibility to put the start date?
 18 **A. No, it's the related-service**
 19 **provider.**
 20 **MS. PEPE-SOUVENIR: I have no**
 21 **further questions for this witness.**
 22 THE HEARING OFFICER: You may
 23 go ahead.
 24 MR. GLASS: Well, yeah -- a

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1 DeMarco - Recross - Glass
 2 few questions.
 3 **RECROSS EXAMINATION**
 4 **BY MR. GLASS:**
 5 Q. First regarding this. Did
 6 Dr. Dreyfus ever direct Mr. Jeter to fill out
 7 the start date on this form?
 8 **A. Not that I know of.**
 9 Q. Did you ever instruct him to
 10 do it?
 11 **A. No, I did not.**
 12 Q. Okay. Then regarding the
 13 Kirshbalm incident we just discussed, do you
 14 think it was wrong for Mr. Jeter to complain if
 15 he thought Ms. Kirshbalm was being improperly
 16 assigned by the school?
 17 **A. From my understanding of the**
 18 **incident I think there was a more appropriate**
 19 **way to make that complaint.**
 20 Q. But it's not improper for a
 21 teacher to do or a guidance counselor, to raise
 22 a concern if staff was being misallocated, in
 23 violation of I.E.P.s?
 24 **A. It's not their role, but**

Page 2721

1 **DeMarco - Recross - Glass**
 2 **I'm -- I would certainly have a conversation if**
 3 **I was a principal. I'm not, but I would assume**
 4 **that that's something that he could bring to --**
 5 **speak to the principal about.**
 6 Q. And if it's legitimately
 7 raising a concern, would you feel it would be
 8 improper to retaliate against someone for
 9 raising that concern?
 10 **A. I don't believe in**
 11 **retaliation.**
 12 Q. Okay. Now, you expressed, in
 13 this letter, that Mr. Jeter was someone who
 14 said that he was closely scrutinized?
 15 **A. Yes, it does.**
 16 Q. You understood -- you
 17 understood that he was -- why he might feel
 18 upset, that this --?
 19 **A. I did understand it, but I**
 20 **didn't feel like it -- I should be the target**
 21 **of his anger.**
 22 **MR. GLASS: Okay.**
 23 **THE HEARING OFFICER: I'm**
 24 **sorry. And when you referred to this letter**

Page 2722

1 DeMarco - Recross - Glass
 2 you're referring to --
 3 **MR. GLASS: D-Thirty-six.**
 4 **THE HEARING OFFICER: --**
 5 **D-Thirty-six. Okay.**
 6 **BY MR. GLASS: (Cont'g.)**
 7 Q. Okay. And but you understood
 8 that he might be upset, because he felt that he
 9 was being wrong -- wrongly watched?
 10 **A. Right.**
 11 Q. And you were likewise upset
 12 when someone made a complaint about your time
 13 in attendance, you felt it was unjustified;
 14 correct?
 15 **A. I -- I -- yes.**
 16 Q. You were pretty upset at Mr.
 17 Martiste (sic) for raising that concern?
 18 **A. I wouldn't say pretty upset**
 19 **because I wasn't doing anything wrong, but it**
 20 **was not a pleasant experience.**
 21 Q. Okay. And those comments he
 22 made about Nazi Germany, wasn't he just trying
 23 to convey that he felt that -- that people were
 24 acting in such a way that that -- that he

Page 2723

1 DeMarco - Recross - Glass
 2 feared the, you know, loss his job because
 3 he -- he -- he was not acting -- felt like he
 4 was being scrutinized over -- well, strike the
 5 question. I'll try to rephrase.
 6 First let me just ask you
 7 about the statement in general. When did you
 8 write the statement?
 9 **A. Soon after it happened.**
 10 Q. And who -- was this a -- and
 11 where did you write it?
 12 **A. I went up and -- on my**
 13 **computer, I wrote it.**
 14 Q. And who did you give it to?
 15 **A. Well, at first I -- I just**
 16 **filed it, and then when I shared it with Dr.**
 17 **Dreyfus she wanted a copy of it.**
 18 Q. And when did you share it
 19 with Dr. Dreyfus?
 20 **A. Well, I don't know the exact**
 21 **date. I -- I didn't put the 11/03 on the top,**
 22 **so it's possible that that's when Dr. Dreyfus**
 23 **put it, when I gave it to her, but --.**
 24 Q. All right. And did you type

Exhibit K

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06/08/2006, New York, NY, In the matter of Ernest Jeter

Associated Reporters Int'l., Inc.

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1

2

THE STATE EDUCATION DEPARTMENT
THE UNIVERSITY OF THE STATE OF NEW YORK

3

4

In the Matter of

5

NEW YORK CITY DEPARTMENT OF EDUCATION - DISTRICT 75

v.

6

ERNEST JETER

7

Section 3020-a Education Law Proceeding (File #5,285)

8

9

DATE:

June 8, 2006

10

TIME:

10:30 a.m. to 2:28 p.m.

11

LOCATION:

NYC Department of Education

12

Office of Legal Services

49-51 Chambers Street

13

New York, New York 10004

14

BEFORE:

CALVIN W. SHARPE, ESQ.

Hearing Officer

15

27 Undercliff Road

Montclair, New Jersey 07042

16

17

18

19

20

21

22

23

24

COPY

800.523.7887

06/08/2006, New York, NY, In the matter of Ernest Jeter

Associated Reporters Int'l., Inc.

Page 2265

1 Flynn - Cross - Glass
 2 is being charged with. He's not being charged
 3 with whether he had line-of-duty injury or not.
 4 It -- it's a specific charge that he is out for
 5 several days. There's no question as to his
 6 CAR balance or -- or what he had. So I don't
 7 see the relevancy of the line of questioning.
 8 That's -- that's the basis.
 9 THE HEARING OFFICER: Okay.
 10 I -- I get it. Mr. -- Mr. Glass?
 11 MR. GLASS: Well, he's
 12 charged with excessive absence for these missed
 13 periods of time, and whether it's unauthorized
 14 absence or authorized absences, line-of-duty
 15 may very well have an impact on explaining why
 16 he was absent. A CAR balance is a -- is a
 17 defense that they had a -- if they had a viable
 18 CAR balance, which the administration changed
 19 on him -- could be a defense as to whether
 20 these are excused absences, and you know, this
 21 is barely the -- the -- the heart of the
 22 charges -- excessive absence. I want --
 23 THE HEARING OFFICER: I think
 24 it could -- could be related, so I'll overrule

Page 2267

1 Flynn - Cross - Glass
 2 Q. At 400 Main Street?
 3 A. Yeah -- 400 for -- she helped
 4 with the -- with the school -- the teachers --
 5 their payroll.
 6 Q. I want to --
 7 MS. PEPE-SOUVENIR: I'm
 8 trying to look at my copy.
 9 BY MR. GLASS: (Cont'g.)
 10 Q. And that date -- you see how
 11 the -- for the top, there's a date -- last
 12 usage date of 6/15/03.
 13 THE HEARING OFFICER: Looking
 14 at Fifty?
 15 MR. GLASS: Yeah.
 16 THE HEARING OFFICER: Is this
 17 Respondent's Fifty?
 18 BY MR. GLASS: (Cont'g.)
 19 Q. Respondent's Fifty -- you see
 20 that date of 6/15/03?
 21 A. Right.
 22 Q. Does that reflect that there
 23 was still a CAR balance of thirty-seven days,
 24 as of that date?

Page 2266

1 Flynn - Cross - Glass
 2 the objection.
 3 BY MR. GLASS: (Cont'g.)
 4 Q. Okay. So didn't you say
 5 something about Ms. Henderson also talked to
 6 you about this?
 7 A. Yeah.
 8 Q. What -- what did she say
 9 about it?
 10 A. The same thing Dr. Erber.
 11 Q. After -- did she speak to you
 12 after Dr. Erber?
 13 A. Dr. Erber probably spoke to
 14 her first, and then they both told me.
 15 Q. And she told you to change --
 16 A. Yeah.
 17 Q. -- remove his CAR balance?
 18 Is that -- that's a "yes"?
 19 A. Well, not -- oh. Yes.
 20 Q. At some point, was that in --
 21 I believe our -- well, who is -- who is
 22 Danette, by the way?
 23 A. She worked at our district
 24 office. She helped the --.

Page 2268

1 Flynn - Cross - Glass
 2 A. Yes.
 3 MR. GLASS: I'm marking
 4 another document. I just want to make sure.
 5 Is 'R' Fifty -- the last document -- is that in
 6 evidence -- 'R' Fifty?
 7 THE HEARING OFFICER: 'R'
 8 Fifty?
 9 MR. GLASS: I'd like to move
 10 it in. She wrote the note on it.
 11 THE HEARING OFFICER: 'R'
 12 Fifty -- I don't have it in this --
 13 MS. PEPE-SOUVENIR: Did you
 14 try to put that in through -- on the 7th?
 15 MR. GLASS: I think I tried.
 16 Yeah. I probably --
 17 THE HEARING OFFICER: I don't
 18 have a notation of -- of it being received.
 19 MR. GLASS: I'd like to move
 20 it into evidence at this point.
 21 THE HEARING OFFICER: Any
 22 objection, Ms. Pepe-Souvenir?
 23 MS. PEPE-SOUVENIR: I have no
 24 objection. Do you have an extra copy of this?

Exhibit L

To: Office of Equal Opportunity
Complaint Unit
65 Court Street, Room 923
Brooklyn, New York 11201

From: Ernest Jeter
Guidance Counselor/
Related Service Provider
124-21 Flatlands Avenue
Brooklyn, New York 11208

Date: June 1, 2005

Re: Complaint of Alleged Discrimination and Retaliation for filing complaint

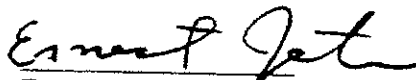
Dear Sir/Madame:

The individuals mentioned above in this complaint have retaliated against me for filing a complaint for discrimination to your office. That is, I have re-assigned and assigned to the District 75 main office at 400 First Avenue, New York, New York. In addition, I have been placed at the district office for some unknown investigation in which the reason for the investigation has not been explained to me.

The actions of re-assigning or assigning me happened on April 12, 2005 to the present. In my opinion, By Fran Dryfus, etc., re-assigning, assigning, investigating, and re-investigating me for some unknown reasons, they are punishing and taking disciplinary action, and harassing me for filing a complaint to your office. Furthermore your office did not honor my April 6, 2005 request to your office for a formal investigation.

I am demanding to be immediately placed back at the school I am entitled to work in.

Thank you


Ernest Jeter

Attachment 2 - Regulation A-830 Complaint Form - Page 1

**CHANCELLOR'S REGULATION A-830
NEW YORK CITY DEPARTMENT OF EDUCATION
COMPLAINT OF ALLEGED DISCRIMINATION**

Complainant:

Please complete every appropriate item and submit it **as soon as possible** after the incident of alleged discrimination or harassment to:

**Office of Equal Opportunity
Complaint Unit
65 Court Street, Room 923
Brooklyn, NY 11201
Fax #718-935-2531**

(Please print clearly all requested information. Also attach additional pages and supporting documentation if necessary.)

Check (✓) One: ☒ Employee ☐ Student ☐ Parent ☐ Other

Name: Ernest Jeter

Student's Name: _____
(If complaint is being filed by parent.)

Home Address: 124-21 Flatlands Ave., / 1-5-B'klyn, N

Phone #: Home 718 498-6437 / Work 357-596-7357 cell

Complaint Request: (Please circle A or B)

- A. **Investigation Request:** This is a request for a formal investigation of a complaint of alleged discrimination.
- B. **Conciliation Request:** This is a request for OEO and/or the Local Equal Opportunity Coordinator (LEOC) to conciliate/resolve a complaint of alleged discrimination.

Name of LEOC or Principal: _____
School/Office/Region: _____
School/Office Phone #: () _____

Nature of Complaint:**1. Check below why you believe you were discriminated against.**

- | | |
|---|--|
| <input type="radio"/> Age | <input type="radio"/> Marital Status |
| <input type="radio"/> Arrest/Conviction | <input checked="" type="radio"/> Race |
| <input type="radio"/> Color | <input type="radio"/> Religion |
| <input type="radio"/> Creed | <input checked="" type="radio"/> Retaliation (for complaint) |
| <input type="radio"/> Disability | <input type="radio"/> Sexual Harassment |
| <input type="radio"/> Ethnicity/National Origin | <input type="radio"/> Sexual Orientation |
| <input type="radio"/> Gender/Sex | <input type="radio"/> Other _____ |
| <input type="radio"/> Alienage/Citizenship Status | |

2. Name(s)/Title(s) of person(s) you believe discriminated against you.

Francine Dryfus, Local Instructional Super-
intendent, D. 75 and Bonnie Brown, Deputy
Superintendent District 75

3. Where did it take place?**4. Date (s) on which alleged act(s) of discrimination occurred.**

Month: April Day 12 Year 2005, Month: June Day 1 Year 2005
2 permit

5. Explain what happened. (Attach extra pages if needed.)

(See attached) Retaliated against
me for filing a complaint to your
office.

6. What relief or corrective action are you seeking?

Return to my previous school, etc.

Signature Ernest Jite Date June 1, 2005



THE NEW YORK CITY DEPARTMENT OF EDUCATION
JOEL I. KLEIN, *Chancellor*

Office of Equal Opportunity

April 21, 2005

Mr. Ernest Jeter
124-21 Flatlands Avenue, Apt. 1-J
Brooklyn, NY 11208

OEO #04-05-01-03-024179, 01

Dear Mr. Jeter:

The Office of Equal Opportunity (OEO) is in receipt of your complaints. Our preliminary investigation, made pursuant to Chancellor's Regulation A-830, indicates that there is **no credible evidence** presented which would support your allegations of discrimination and retaliation. Additionally, you have not presented credible evidence that the actions of school administrators regarding the assessment of your job performance and their involvement in a Special Commissioner of Investigations ("SCI") investigation of you regarding "falsified records and not providing mandated services to students" were **pretexts** for illegal discrimination. The issues raised in your complaints regarding your job performance and the SCI investigation are best addressed by your union. Based on the foregoing, OEO has declined to assert further jurisdiction over this matter and has closed your case file.

If you have any questions, you may contact Michael J. Valente, Esq., Equal Opportunity Complaint Officer at (718) 935-3319.

Sincerely,

Connie A. Shulman
Acting Director

CAS:mjv

Exhibit M

10/12/2005 14:44

1212-374-5596

DEPT OF EDUCATION

PAGE 02/1



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

OFFICE OF THE CHANCELLOR

52 Chambers Street, Rm. 308, New York, NY 10007

October 12, 2005

BY FAX - (718) 722-2869

Kathleen Fitzharris
Investigator
State Division of Human Rights
55 Hanson Place
Brooklyn, New York 12217

RECEIVED

APPROPRIATE OFFICE

Re: Ernest Jeter v. NYC DOE and Norma Barinas
SDHR No.: 1017254

Dear Ms. Fitzharris:

Allegation

Complainant, who filed a previous case with the Division, now claims that the actions taken by the New York City Department of Education ("the Department") constitute retaliation. He claims that his assignment to the District Office in April 2005 constitutes disparate treatment and that he has been "falsely accused of excessive absenteeism... and brought up on unwarranted disciplinary charges."

Statement of Facts

The Department emphatically denies discriminating against complainant in retaliation for his having filed a prior complaint with the Division, or for any other unlawful reason.

District 75 Local Instructional Superintendent ("LIS") Francine Dreyfus advises that complainant has been assigned to the District Office since April 2005 as a result of substantiated findings based on an investigation by the Department's Office of Special Investigations ("OSI"). He was removed from his assignment at 811K as per the directive from the Department's Office of Legal Services. The OSI investigation and the substantiated findings were based on a parent's complaint that her two children who attended 811K were not seen for counseling by complainant during the 2003-04 school year.

As of late September 2004, complainant's related service attendance logs, sign in/sign out sheets and the students' daily attendance, ATS report, were checked to ascertain if complainant actually followed his schedule and adhered to the students' mandates for counseling.

2

This was as a result of letters complainant received in June 2004 from his supervisor, Margo Levy, Supervisor of Guidance Counselors/Social Workers and a letter dated in October 2004 (following a conference in late September 2004) from Superintendent Dreyfus in which it was documented that complainant did not maintain his official Related Service Attendance cards and/or did not perform his duties (i.e., see mandated students on his schedule for counseling).

Complainant's related service attendance cards as well as the sign in/sign out sheets were collected every Monday. These documents were compared to individual students' mandates and their daily attendance in school. The Assistant Principal also periodically reviewed the other related service providers' attendance cards and sign in/sign out sheets.

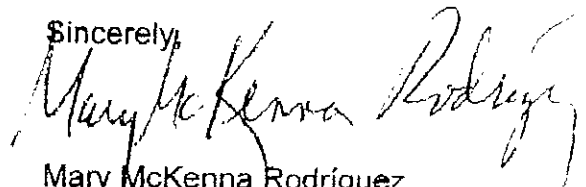
In May 2004, a meeting was held with Principal Henderson concerning complainant's failure to follow his counseling schedule, failure to see students for their mandated service, and failure to fill out the Related Service Attendance Cards. Principal Henderson brought complainant's failing to perform his responsibilities as a counselor to Margo Levy's attention.

Conclusion

Complainant has failed to make a *prima facie* case of discrimination based on retaliation. Establishing a *prima facie* case of discrimination requires a showing that (1) complainant belongs to a protected class; (2) he performed his duties satisfactorily; (3) he was subjected to an adverse employment action; and (4) such adverse employment action occurred in circumstances giving rise to an inference of discrimination on the basis of her membership in a protected class. McLee v. Chrysler Corp., 109 F 3d 130 (2d Cir. 1997).

Complainant failed to perform his duties satisfactorily. The complaint does not allege any information that would lead anyone to conclude that discrimination based on retaliation occurred. Thus, I respectfully request that the Division issue a finding of no probable cause and dismiss this complaint in its entirety. If you have any questions on this matter, please do not hesitate to contact me.

Sincerely,



Mary McKenna Rodríguez
Senior Counsel

MMR/tg

RECEIVED